and that is to petition the court for their return before the trial at which they are intended to be introduced.[8] It would seem that this is carrying the maxim "to the diligent belongs the reward" very far; and it suggests that a person may absolutely forfeit his substantive rights, as guaranteed by the Constitution, through a delay or misapprehension as to the proper procedure to be taken in order to protect those rights. In *Weeks* v. *United States*,[9] the court distinguishes *Adams* v. *New York*,[10] by pointing out that in the former case the accused made "seasonable application" for a return of the papers wrongfully seized, and that therefore the lower court erred "in holding them and permitting their use upon the trial."[11] In *Lum-Yan* v. *United States*,[12] the court overruled the objection of the defendant to the admission in evidence of papers which had been taken from him by an unlawful search and seizure, because, as the court observes, "it does not appear that the plaintiff in error seriously resisted the search that was made." From this it might be taken that a person's right to protection under the Constitution is made to depend upon his physical prowess in resisting any encroachemnt of his rights.

The legal principle to be gathered from the cases seems to be that if papers are taken by officials of the government, in an illegal search and seizure, they may be recovered by petition to the court, even though they contain evidence essential to the successful prosecution of an action against the one from whom taken. But if no effort is made to recover such papers until the trial of the action, it is no objection to their admissibility that they were seized illegally by the government.[13]

E. L. H.

EQUITY—ENFORCEMENT OF DECREES—REMEDIES FOR DISOBEDIENCE—Punishment for contempt of the King's writ was the original and characteristic feature of the processes of Court of Chancery, and for disobedience to its decrees nothing could be done but order the contumacious party to prison, there to remain until he would obey.[1] A writ of attachment first issued against his per-

[8] Weeks v. United States, 232 U. S. 383 (1914); United States v. Friedberg, 233 Fed. Rep. 313 (1916).

[9] *Supra*, n. 8.

[10] *Supra*, n. 7.

[11] See also United States v. McHie, 194 Fed. Rep. 894 (1912), and, United States v. McHie, 196 Fed. Rep. 586 (1912)

[12] 193 Fed. Rep. 970 (1912).

[13] The prohibition in the Fourth Amendment against unreasonable searches and seizures, does not apply to the States. National Safe Deposit Co. v. Stead, 232 U. S. 58 (1914).

[1] J. R. v. M. P. *et al.*, Y. B. 37 H VI, Ames' Cases in Equity, 1.

son commanding the sheriff to bring him before the Chancellor to answer for his contempt, and if he still refused obedience he might then be lodged in jail indefinitely. That equity acted only *in personam* was elementary. But the fact that other methods were soon devised to enable equity to enforce its decrees, is ample proof that the proceedings by way of contempt and imprisonment were not always efficacious in securing real relief. The first step in what might be called the earlier development of remedies for disobedience of decrees was in the adaption of the writ of assistance, an ancient possessory writ, to the needs of equity. If the decree in a suit for land required the defendant to deliver the possession to the plaintiff and he refused to obey, the writ of assistance was used to put the plaintiff in possession and keep him there. Another method devised by the court was the writ of sequestration, by means of which writ the personal property of the defendant and the rents and profits of his real property were sequestered and he was kept from their enjoyment until he cleared his contempt. The scope of this writ was gradually widened, so that any property of the defendant could be sequestered and not merely kept from him, but could also be sold to satisfy the plaintiff's claim. While the primary purpose of both writs was indirectly to compel the defendant himself to perform the decree, they provided, nevertheless, for specific execution of the decree independently of the act of the defendant. It can readily be seen that for this reason they were bitterly opposed by the common law courts, who saw in them an overstepping by equity of its jurisdiction *in personam* and an infringement of their own monopoly of proceedings *in rem*.

In England, at the present day, the writ of assistance has been superseded by the substantially similar writ of possession and is seldom, if ever, used to enforce obedience to a decree by a refractory defendant. The writ of sequestration is used principally against a corporation,[2] and, in addition, an attachment for contempt may issue against the directors or other officers to enforce obedience.[3] The ordinary procedure for compelling a recalcitrant defendant to do any act other than the payment of money, or to refrain from doing something, is by a writ of attachment or commital for contempt.[4] By statute, also, Chancery has been given permission to act *in rem* in certain cases. Thus where a party refuses to obey a decree for the execution of a conveyance or other instrument, the court may appoint a master to make the conveyance or other instrument.[5]

[2] Stancomb v. Trowbridge Urban Council (Eng. 1910), 2 Ch. 190.

[3] McKeown v. Joint Stock Institute, (Eng. 1899), 1 Ch. 671.

[4] Kerr on Injunctions, 684; D. v. A. & Co. (Eng. 1900), 1 Ch. 488; Taylor v. Plinston (Eng. 1911), 2 Ch. 608.

[5] Act July 16, 1830. Not long after, England adopted a more direct method and by its plan of "vesting orders" the court has power in a great

In our own country attempts have been made by statutes to restrict the power of equity to enforce obedience to its decrees by attachment and imprisonment for contempt, but with little success. In a recent Pennsylvania decision, *Commonwealth, ex rel., Lieberum* v. *Lewis*.[6] an injunction was issued against the defendant restraining him from continuing to obstruct a right of way of maintaining a building thereon, and he was ordered to remove it. Upon his refusal to obey, he was committed to jail for contempt, the court holding that the Act of June 16, 1836,[7] regulating the power of the several courts of this commonwealth "to issue attachments and inflict summary punishment for contempts of court," has no relation to attachments to enforce decrees in equity where the object is not to "inflict punishment," but to compel performance of such decrees. Attachment and imprisonment for contempt has been used repeatedly in Pennsylvania.[8] The court also considered at length the alternative remedies existing in equity for the enforcement of its decrees against a disobedient party, and it is interesting to note that the old Chancery writs, although seldom used, still exist in this State. The writ of assistance, although having fallen into disuse in England, is still a useful weapon in this country,[9] and the writ of sequestration is used effectively in many cases.[10] Both writs have been provided for by the Pennsylvania rules of court.[11] A bill to effectuate a decree has been another method devised by the courts of equity in this country to carry into effect their decrees.[12] In addition, every State now has a statute providing for a substantial and practical enforcement of a decree for the execution of a conveyance or other instrument. Unlike the English statute, which, as we have seen, provides for the appointment of a master to make the conveyance, the typical American statute provides that in case of non-performance by the defendant, the decree recorded shall itself operate to transfer title.[13] Curiously enough, the Pennsylvania statute of 1901 adopted the English method.[14]

many cases to vest the property in the successful litigant just as effectively as if the person so decreed had obeyed the decree. Act to extend provisions of the Trustee Act, 15 & 16 Vict. Chap. 55 (1850).

[6] 98 Atl. 31 (Pa. 1916).

[7] P. L. 793, Sec. 24.

[8] Chew's Appeal, 44 Pa. 247 (1863); Tome's Appeal, 50 Pa. 285 (1865); Wilson v. Wilson, 142 Pa. 247 (1891); Patterson v. Wyoming Valley, *etc.*, 31 Pa. Super. 112 (1906). ffl ffl

[9] Comm. *ex rel.* Lowry v. Reed, 59 Pa. 425 (1868); Root v. Woolworth, 150 U. S. 401 (1893).

[10] Comm. *ex rel.* Tyler v. Small, 26 Pa. 31 (1856); Hosack v. Rogers, 11 Paige 603 (N. Y. 1844).

[11] Rules 86 and 87.

[12] Winton's Appeal, 97 Pa. 385 (1881); Root v. Woolworth, *supra*, note 9.

[13] Statutes of this kind were enacted in America even before the English Act of 1830. The earliest is that of Maryland in 1785.

[14] Act of April 19, 1901, P. L. 83.

It will be seen from these statutes that the courts of equity have made a marked departure from the fundamental idea that their jurisdiction is exclusively *in personam* when attempting to enforce obedience to their decrees. The statutes are the result of the feeling which has been persistently growing, that equity itself should have some method of enforcing and carrying out a decree which an obstinate defendant has refused to perform. This tendency is further illustrated by the new Equity Rule eight of the Supreme Court of the United States, the latter part of which provides that: "If a mandatory order, injunction, or decree for the specific performance of any act or contract be not complied with, the court or a judge, besides or instead of, proceeding against the disobedient party for a contempt or by sequestration, may by order direct that the act required be done, so far as practicable by some other person appointed by the court, at the cost of the disobedient party, and the act, when so done, shall have like effect as if done by him."[15] Turning for a moment to the Pennsylvania decision [16] before cited, it is obvious that the case would have been far more effectively disposed of had the court directed the building to be removed by some appointee of their own, in accordance with this rule, instead of allowing their hands to be tried by the dogged contumacy of a defendant who preferred jail to obedience to the decree. No legislation is necessary to enable courts of equity to exercise this power of acting through third parties at the cost of the disobedient defendant, since it is a power inherent in all courts. It is hoped that the definite recognition by our highest court of the existence of such a power will not only have a salutary effect upon the courts in blazing a way for future judicial development, but may also result in a statutory enactment expressly granting this power to courts of equity and thereby satisfying even the most conservative tribunals.

P. H. R.

PROPERTY—DAMAGES FOR "SPITE" WALL—The right to the full and complete enjoyment of an absolute dominion over one's own property has for ages been most jealously guarded by our legal system, and any attempt to encroach by legal means upon this right has been met with instant and determined opposition. That when a man owns property he owns to the heavens above and to the centre of the earth below, and that within this rather definite region he may do what he pleases so long as he does not violate the public law or commit a nuisance, is insisted on as one of the essential attributes of this absolute dominion. It is, therefore, interesting to note the

[15] The English Rules of the Supreme Court, Order XLII, Sec. 30, provides practically the same thing.

[16] *Supra,* note 6.